

CHAPTER 23

UNITED NATIONS AND PEACE OPERATIONS

REFERENCES

1. United Nations Charter.
2. Presidential Decision Directive 25, May 1994.
3. Joint Pub 3-07.3, Joint Tactics, Techniques, and Procedures for Peace Operations, 12 February 1999.
4. FM 100-8, The Army in Multi-National Operations, 24 November 1997.
5. FM 100-23, Peace Operations, 30 December 1994

INTRODUCTION. The key to a successful peace operation rests with a fundamental understanding of operational goals and objectives. The legal, doctrinal, and operational context of peace operations requires attorneys who work proactively with an often ad hoc staff to articulate legal support for diverse facets of these complex missions. FM 100-23 contrasts the operational reality of Peace Operations with armed conflicts by declaring that “in peace operations, *settlement*, not victory is the ultimate measure of success, though settlement is rarely achievable through military operations alone.”¹ As a corollary to this reality, the military elements conducting OCONUS peace operations must remember that the ambassador has the statutory responsibility for coordinating the activities of executive branch employees and conducting foreign affairs on behalf of the President.² This chapter will give you a thumbnail sketch of the history of Peace Operations, followed by an overview of the National Policy and the Doctrinal Framework for Peace Operations. The remainder of this chapter will supplement other chapters, focusing on selected legal issues unique to Peace Operations.

HISTORICAL BACKDROP. In the area of Peace Operations, Judge Advocates should be especially familiar with the UN Charter, specifically Chapter VI, Pacific Settlement of Disputes (Articles 33-38), and Chapter VII, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51). Chapter VI envisions a Security Council role in assisting parties to “any dispute likely to endanger the maintenance of international peace and security” as they strive to resolve conflicts through “peaceful means of their own choice.”³ Chapter VI does not specifically envision or authorize the deployment of military forces under UN authority to interpose themselves between hostile parties. The frequent use of military forces as Peacekeepers, however, evolved as an extension of the UN desire to facilitate the “adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”⁴ Peacekeeping is an internationally accepted mode of managing conflicts and giving states a buffer to seek long term, peaceful resolutions.⁵ Because Peacekeeping was a compromise generated from the Security Council’s inability to use its Chapter VII enforcement powers, Peacekeeping Operations (PKO) have become an inherent part of the UN strategy for resolving international disputes in the absence of more comprehensive and lethal collective security operations.

The Cold War context within which the UN operated for its first 44 years prevented the full use of Chapter VII authority. Chapter VII gives the Security Council authority to maintain international peace and security by taking “such action by air, sea, or land forces as may be necessary.”⁶ Member states of the UN are obligated to “accept and carry” out the decisions of the Security Council.⁷ Since 1990, the changing international security environment increased the scope

¹ Dep’t of Army, Field Manual 100-23, Peace Operations (30 December 1994). <<http://www.atsc-army.org/cgi-bin/atdl.dll/fm/100-23/fm100-23.htm>>

² 22 U.S.C. § 3927. For a discussion of the relationship between the CINC’s COCOM authority under 10 U.S.C. §§ 161-168 and the ambassador’s normal peacetime authority, see the chapter on Non-Combatant Evacuation Operations. For the legal basis of COCOM see 10 U.S.C. § 164.

³ UN Charter, art. 33, para. 1.

⁴ UN Charter, art. 1, para. 1.

⁵ There are currently 15 Peacekeeping Missions throughout the world. For a current list of active missions with personnel, budget, and fatality statistics see <http://www.un.org/Depts/dpko>.

⁶ UN CHARTER, art. 42.

⁷ UN CHARTER, art. 25. If preventive or enforcement action becomes necessary, the General Assembly has the power to suspend the offending state from the exercise of rights and privileges of UN membership at the request of the Security Council. UN Charter, art. 5.

and number of UN efforts. On the one hand, the thawing of Cold War hostilities allowed the Security Council to take prompt and decisive action in response to Iraqi aggression in Kuwait. In the wake of the Gulf War success, the Security Council used Chapter VII to authorize numerous operations which went well beyond traditional peacekeeping (including enforcement of human rights provisions, establishment of safe havens for fleeing refugees, International Criminal Tribunals, election monitoring, sanctions enforcement, nonproliferation monitoring, preventative diplomacy, and nation building). The rapid increase in operations, both in number and complexity, generated some successes (Cambodia, El Salvador, and Macedonia) as well as some failures (Somalia and Bosnia-Herzegovina before IFOR). At the time of this writing, the UN is continuing its efforts to reform its own operational procedures,⁸ and reevaluating the proper role for military deployments under UN authority in maintaining international peace and security.

The number of U.S. Army deployments is up 300% since 1989.⁹ Before 1991, only a handful of U.S. military observers served in three UN peacekeeping operations. Since the end of the Cold War U.S. military personnel have served in UN peace operations in Kuwait/Iraq, the Western Sahara, Cambodia, the former Yugoslavia, Somalia, Rwanda, and Haiti. The DoD has provided logistic support and planning expertise to most UN peace operations, as well as providing assistance to other peacekeeping operations where the UN is not involved (i.e., Sinai, Beirut, Africa, and the Caribbean). These activities, undertaken in close cooperation with the DoS, support U.S. foreign policy objectives for the peaceful resolution of conflict, reinforce the collective security efforts of the U.S., our allies, and other UN member states, and enhance regional stability. The current National Security Strategy states the “America must continue to be an unrelenting force for peace.”¹⁰

PRESIDENTIAL DECISION DIRECTIVE 25 (May 1994)¹¹ A former Secretary of State declared that while the UN performs many important functions, “its most conspicuous role—and the primary reason for which it was established—is to help nations preserve the peace.”¹² The Clinton Administration defined its policy towards supporting Peace Operations in Presidential Decision Directive 25, “The Clinton Administration’s Policy on Reforming Multilateral Peace Operations (May 1994).” PDD-25 is a classified document; the information in this summary is based upon the unclassified public extract. The document reiterated that Multilateral Peace Operations are an important component of the U.S. national military strategy and that U.S. forces will be used in pursuit of U.S. national interests. PDD-25 promulgated six major issues of reform and improvement. Many of the same areas are the subjects of active debate, with Congress discussing methods of placing stricter controls on how the U.S. will support peace operations and how much the U.S. will pay for peace operations. The PDD-25 factors are an aid to the decision-maker. For the judge advocate, they help define the applicable body of law, the scope of the mission statement, and the permissible degree of coalition command and control over U.S. forces. There will seldom be a single document that describes the process of applying the PDD-25 criteria. Nevertheless, the PDD-25 considerations surface in such areas as ROE, the media plan, command and control arrangements, the overall legal arguments for the legitimacy of the operation, the extent of U.S. support for other nations to name a few. The six areas highlighted by PDD-25 follow:

1. Making disciplined and coherent choices about which peace operations to support. (3 Phase Analysis)

The Administration will consider the following factors when deciding whether to vote for a proposed Peace Operation (either Chapter VI or VII):

⁸ Such efforts have included the formation (at U.S. urging) of an Operations Center to help coordinate and monitor UN Peacekeeping Missions on a round the clock basis, the establishment of an Under Secretary General for Internal Oversight Services to target fraud and abuse, more efficient management procedures, and a no-growth budget which is expected to result in a 10% reduction in the Secretariat’s staffing level. There are currently 69 countries that have officially expressed interest in participating in Standby Force arrangements, to include 15 that have already signed Memorandums of Understanding with the UN for the provision of troops and equipment.

⁹ The Honorable Togo D. West, Jr. & General Dennis J. Reimer, United States Army Posture Statement FY 97: Meeting the Challenges of Today, Tomorrow, and the 21st Century 3 (1996).

¹⁰ The White House, A National Security Strategy for a New Century, October 1998.

¹¹ Bureau of Int’l Org. Affairs, U.S. Dep’t of State, Pub. No. 10161, The Clinton Administration’s Policy on Reforming Multilateral Peace Operations (1994), reprinted in 33 I.L.M. 795 (1994). See also James P. Terry, *The Criteria for Intervention: An Evaluation of U.S. Military Policy in U.N. Operations*, 31 Tex. Int. L. Rev. 101 (1996).

¹² Madeleine K. Albright, The UN, The U.S. and the World, 7 Dep’t of State Dispatch 474 (1996).

1) UN involvement advances U.S. interests and there is a community of interests for dealing with the problem on a multilateral basis (NOTE: may entail multinational chain of command and help define the scope of permissible support to other nations); 2) There is a threat to or breach of international peace and security, defined as one or a combination of the following: international aggression, urgent humanitarian disaster coupled with violence, or sudden interruption of established democracy or gross violation of human rights along with violence or the threat thereof (NOTE: obviously important in defining the mission, helping define the scope of lawful fiscal authority, and preventing mission creep); 3) There are clear objectives and an understanding of whether the mission is defined as neutral peacekeeping or peace enforcement; 4) Does a working cease-fire exist between the parties prior to Chapter VI missions? **OR** 5) Is there a significant threat to international peace and security for Chapter VII missions?; 6) There are sufficient forces, financing, and mandate to accomplish the mission (NOTE: helps define the funding mechanism, supporting forces, and expected contributions of combined partners); 7) The political, humanitarian, or economic consequences are unacceptable; 8) The operation is linked to clear objectives and a realistic end state (NOTE: helps the commander define the specified and implied tasks along with the priority of tasks).

If the first phase of inquiry results in a U.S. vote for approving the operation, a second set of criteria will determine whether to commit U.S. troops to the UN operation:

1) Participation advances U.S. interests (NOTE: helps the commander and lawyer sort out the relative priorities among competing facets of the mission, helps guide the promulgation of ROE which comply with the national interest, and helps weight the best allocation of scarce fiscal resources); 2) Personnel, funds, and other resources are available (NOTE: may assist DoD obtain funding from other executive agencies in the interagency planning process); 3) U.S. participation is necessary for the success of the mission; 4) Whether the endstate is definable (NOTE: the political nature of the objective should be as clearly articulated as possible to guide the commander); 5) Domestic and Congressional support for the operation exists; and 6) Command and control arrangements are acceptable (NOTE: within defined legal boundaries).

The last phase of the analysis applies when there is a significant possibility that the operation will commit U.S. forces to combat:

1) There is a clear determination to commit sufficient forces to achieve the clearly defined objective; 2) The leaders of the operation possess clear intention to achieve the stated objectives; and 3) There is a commitment to reassess and continually adjust the objectives and composition of the force to meet changing security and operational requirements (NOTE: obviously affects the potential for mission creep and the ongoing security of U.S. forces as well as ROE modifications).

2. Reducing U.S. costs for UN peace operations.

This is the area of greatest congressional power regarding control of military operations.¹³ Funding limitations have helped to check the Security Council's ability to intervene in every conflict. In normal Chapter VI operations, member states pay obligatory contributions based on a standard assessment (currently 30.4% for the U.S.). In Chapter VII peace operations, participating States normally pay their own costs of participation. This is the exception to the normal rule. PDD-25 calls for U.S. contributions to be reduced to 25%. The policy also proposes specific steps for the UN to reduce the costs of UN peace operations. The Fiscal Year 1998 DoD Authorization Act outlined a specific set of policy goals to increase allied burdensharing for any nation that has cooperative military relations with the U.S., including basing arrangements, security arrangements, or mutual participation in multinational military organizations or operations.¹⁴ The Fiscal Year 1999 DoD Authorization Act amended 10 U.S.C. § 113 to require the Secretary of Defense to prepare a report detailing the clear and distinct objectives of the United States as well as the set of conditions that define the endpoint of

¹³ U.S. CONST. art. 1, sec. 8.

¹⁴ National Defense Authorization Act for Fiscal Year 1998, § 1221, H. Rep. No. 105-340, at 317 (1997).

the operation which must accompany any request for supplemental appropriations in support of a contingency likely to involve more than 500 personnel.¹⁵

3. Policy regarding the command and control of U.S. forces.

Command and control of U.S. forces sometimes causes more debate than the questions surrounding U.S. participation. The policy reinforces the fact that U.S. authorities will relinquish only “operational control” of U.S. forces when doing so serves U.S. security interests. The greater the U.S. military role, the less likely we will give control of U.S. forces to UN or foreign command. Any large scale participation of U.S. forces that is likely to involve combat should ordinarily be conducted under U.S. command and operational control or through competent regional organizations such as NATO or ad hoc coalitions. Operation Joint Endeavor presented an unusual twist in that the CINC was the supporting commander to a regional alliance (NATO). The command and control issues raised by Operation Joint Endeavor will recur if the UN authorizes regional organizations to execute future Peace Operations.

PDD-25 forcefully states that the President will never relinquish command of U.S. forces. However, the President retains the authority to release designated U.S. forces to the Operational Control (OPCON) of a foreign commander for designated missions. When **U.S. forces** are under the operational control of a UN commander they **will always maintain the capability to report separately to higher U.S. military authorities**. This particular provision is in direct contravention to UN policy. UN policy is that once under UN control, soldiers and units will only report to and seek orders and guidance through the UN command channels. The policy also provides that **commanders of U.S. units participating in UN operations will refer to higher U.S. authorities orders that are illegal under U.S. or international law, or are outside the mandate of the mission to which the U.S. agreed with the UN**, if they are unable to resolve the matter with the UN commander. As a practical matter, this means that deployed units are restricted to the mission limits prescribed in the CJCS Execute Order for the mission. The **U.S. reserves the right to terminate participation at any time or take whatever actions necessary to protect U.S. forces**.

The judge advocate must understand the precise definitions of the various degrees of command in order to help ensure that U.S. commanders do not exceed the lawful authority conveyed by the command and control arrangements of the CJCS execute order.¹⁶ **NOTE→ NATO has its own doctrinal definitions of command relationships which are similar to the U.S. definitions. FM 100-8 summarizes the NATO doctrine as it relates to U.S. doctrinal terms.**¹⁷ The Command and Control lines between foreign commanders and U.S. forces represent legal boundaries that the lawyer should monitor.

COCOM is the command authority over assigned forces vested only in the commanders of combatant commands by title 10, U.S. Code, section 164, or as directed by the President in the Unified Command Plan (UCP), and cannot be delegated or transferred. COCOM is the authority of a combatant commander to perform those functions of command over assigned forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction over all aspects of military operations, joint training (or in the case of USSOCOM, training of assigned forces), and logistics necessary to accomplish the missions assigned to the command.

OPCON is inherent in COCOM and is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission. OPCON includes authoritative direction over all aspects of military operations and joint training necessary to accomplish missions assigned to the command. NATO OPCON is more limited than the U.S. doctrinal definition in that it includes only the authority to control the unit in the exact specified task for the limited time, function, and location.

TACON is the command authority over assigned or attached forces or commands, or military capability made available for tasking that is limited to the detailed and usually local direction and control of movements or maneuvers

¹⁵ Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, § 1212, H. Rep. No. 105-736, at 237 (1998).

¹⁶ The precise definitions of the degrees of command authority are contained in Joint Pub 0-2, UNIFIED ACTION ARMED FORCES (UNAAF)(24 February 1995) and Joint Pub 3-0, DOCTRINE FOR JOINT OPERATIONS (1 February 1995).

¹⁷ DEP'T OF ARMY, FIELD MANUAL 100-8, THE ARMY IN MULTINATIONAL OPERATIONS (24 November 1997)<<http://www.atsc-army.org/cgi-bin/atdl.dll/fm/100-8/default.htm>>

necessary to accomplish assigned missions or tasks. TACON may be delegated to and exercised by commanders at any echelon at or below the level of combatant command. TACON is inherent in OPCON and allows the direction and control of movements or maneuvers necessary to accomplish assigned missions or tasks.

Support is a command authority. A support relationship is established by a superior commander between subordinate commanders when one organization should aid, protect, complement, or sustain another force. Support may be exercised by commanders at any echelon at or below the level of combatant command. Several categories of support have been defined for use within a combatant command as appropriate to better characterize the support that should be given.

4. Reforming and Improving the UN Capability to Manage Peace Operations. The policy recommends 11 steps to strengthen UN management of peace operations.

5. Improving the U.S. Government Management and Funding of Peace Operations. The policy assigns responsibilities for the managing and funding of UN peace operations within the U.S. Government. DoD will take lead management and funding responsibility for those UN operations that involve U.S. combat units and those that are likely to involve combat, whether or not U.S. troops are involved. DoS will retain lead management and funding responsibility for traditional peacekeeping that does not involve U.S. combat units. Regardless of who has the lead, DoS remains responsible for the conduct of diplomacy and instructions to embassies and our UN Mission.

6. Creating better forms of cooperation between the Executive, the Congress, and the American public on peace operations. This directive looks to increase the flow between the executive branch and Congress, expressing the President's belief that U.S. support for participation in UN peace operations can only succeed over the long term with the bipartisan support of Congress and the American people.

DOCTRINAL FRAMEWORK

FM 100-23, Peace Operations, is the Army's keystone doctrinal reference on the subject. The key operational variables are **the necessity of using force, degree of impartiality, and relative consent of the parties**. These variables affect every facet of operations and remain fluid throughout any mission. Joint Pub 3-07¹⁸ is also a valuable guide. While not a doctrinal source, the Joint Task Force Commander's Handbook for Peace Operations (16 June 1997) is a widely disseminated source of lessons learned and operational issues. Chapter V of Joint Pub 3-0, Doctrine for Joint Operations (1 February 1995) is an excellent summary of the operational considerations and principles for Military Operations Other Than War (MOOTW) which directly apply to Peace Operations. The principles for Joint MOOTW are **objective, unity of effort, security, restraint, perseverance, and legitimacy**. Chapter V defines the meaning of the principles of MOOTW and provides excellent illustrations from actual operations.

DEFINITIONS. There is still no universally accepted definition for "peacekeeping" or of related activities. The absence of one specific definition has resulted in the term being used to describe almost any type of behavior intended to obtain what a particular nation regards as peace. There are even slight inconsistencies within U.S. doctrine and other publications that define peacekeeping and related terms.

Peace Operations

Peace Operations is a new and comprehensive term that covers a wide range of activities. Defined in FM 100-23 as: an umbrella term that encompasses three types of activities; activities with predominantly diplomatic lead (preventive diplomacy, peacemaking, peace building) and two complementary, predominately military, activities (peacekeeping and peace enforcement).

Defined in Joint Pub 3-07.3 as: the umbrella term encompassing peacekeeping, peace enforcement, and any other military, paramilitary or non-military action taken in support of a diplomatic peacemaking process. Peace operations' primary objective is to create and sustain conditions conducive to peace. The end game is political settlement, not victory on the battlefield, to create and sustain the conditions in which political and diplomatic activities may proceed.

¹⁸ Joint publications can be found electronically at <http://www.dtic.mil/doctrine>

Whereas peace operations are authorized under both Chapters VI and VII of the United Nations Charter peace operations (as defined by 100-23) the doctrinal definition excludes high end enforcement actions where the UN or UN sanctioned forces have become engaged as combatants and a military solution has now become the measure of success. An example of such is Desert Storm (i.e. with the start of military operations on 15 January 1991).

Peacekeeping

FM 100-23 and Joint Pub 3-07.3: Military or paramilitary operations that are undertaken with the **consent** of all major belligerents, designed to monitor and facilitate implementation of an **existing truce agreement** and support diplomatic efforts to reach a long-term political settlement.

In his report, An Agenda for Peace, 17 June 1992, the UN Security General defined peacekeeping as: The deployment of a UN Presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peacekeeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.

Peacekeeping is conducted under the authority of Chapter VI, UN Charter, and just as the name implies, there must be a peace to keep. It is intended to maintain calm while giving the peacemakers time to negotiate a permanent settlement to the underlying dispute and/or assist in carrying out the terms of a negotiated settlement. Therefore, there must be some degree of stability within the area of operations. Peacekeeping efforts support diplomatic endeavors to achieve or to maintain peace in areas of potential or actual conflict and often involve ambiguous situations requiring the peacekeeping force to deal with extreme tension and violence without becoming a participant.

Peacekeeping requires an invitation or, at a minimum, the consent of all the parties to the conflict. Peacekeepers must remain completely impartial towards all the parties involved. Peacekeeping forces may include unarmed observers, lightly armed units, police, and civilian technicians. Typical peacekeeping operations may include: observe, record, supervise, monitor, and occupy a buffer or neutral zone, and report on the implementation of the truce and any violations thereof. Typical peacekeeping missions include:

- Observing and reporting any alleged violation of the peace agreement.
- Handling alleged cease-fire violations and/or alleged border incidents.
- Conducting regular liaison visits to units within their AO.
- Continuously checking forces within their AO and reporting any changes thereto.
- Maintaining up-to-date information on the disposition of forces within their AO.
- Periodically visiting forward positions; report on the disposition of forces.
- Assisting civil authorities in supervision of elections, transfer of authority, partition of territory, & administration of civil functions.

Force may only be used in self-defense. Peacekeepers should not prevent violations of a truce or cease-fire agreement by the active use of force, their presence is intended to be sufficient to maintain the peace.

Peace Enforcement

FM 100-23: The application of military force, or the threat of its use, normally pursuant to international authorization, to compel compliance with resolutions or sanctions designed to maintain or restore peace and order. An Agenda for Peace: Actions taken to compel a recalcitrant belligerent to comply with demands of the Security Council. Employing those **measures provided for in Chapter VII** of the Charter of the United Nations.

Peace enforcement is conducted under the authority of Chapter VII, UN Charter, and could include combat, armed intervention, or the physical threat of armed intervention. In contrast to peacekeeping, peace enforcement forces do not require consent of the parties to the conflict and they may not be neutral or impartial. Typical missions include:

- Protection of humanitarian assistance.
- Restoration and maintenance of order and stability.
- Enforcement of sanctions.
- Guarantee or denial of movement.
- Establishment and supervision of protected zones.
- Forcible separation of belligerents.

Peacemaking

FM 100-23: A process of diplomacy, mediation, negotiation, or other forms of peaceful settlement that arranges ends to disputes and resolves issues that led to conflict. **An Agenda for Peace:** Action to bring hostile parties to agreement, essentially through such **peaceful means as those foreseen in Chapter VI** of the Charter of the United Nations. **Peacemaking is strictly diplomacy.** Confusion still exists in this area because the former U.S. definition of peacemaking was synonymous with the definition of peace enforcement.

Preventative Diplomacy

FM 100-23: Diplomatic actions taken in advance of a predictable crisis and aimed at removing the sources of conflict before violence erupts, or to limit the spread of violence when it occurs. **Joint Pub 3-07.3:** Diplomatic actions, taken in advance of a predictable crisis, aimed at resolving disputes before violence breaks out. **An Agenda for Peace:** Action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.

Used by the UN with the deployment of a force to Macedonia, preventive diplomacy is generally of a short-term focus (although Macedonia has become a long-term commitment), designed to avert an immediate crisis. It includes confidence building measures and, while it is diplomatic in theory, it could involve a show of force, preventative deployments and in some situations, demilitarized ones.

Whereas peacekeeping and preventative deployments have many of the characteristics (i.e. similar rules of engagement and no or very limited enforcement powers), preventative deployments usually will not have the consent of all the parties to the conflict and do not need an existing truce or peace plan.

Peace-Building

FM 100-23: Post-conflict actions, predominately diplomatic, that strengthen and rebuild civil infrastructure and institutions in order to avoid a relapse into conflict. **An Agenda for Peace** uses the term Post Conflict Peace Building and is defined as: Action to identify and rebuild support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict. Includes many of the traditional civil affairs/nation building operations. Tasks may also include disarming of former combatants, engineering projects, training of security personnel, monitoring of elections, and reforming or strengthening of governmental institutions. Peace-building activities may generate additional tasks for units earlier engaged in peacekeeping or peace enforcement. You will typically find post conflict peace-building taking place to some degree in all Peace Operations. These activities are prime candidates for causing mission creep. You need to be sure that such activities are included in the mission and that the proper funds are used.

Other Terms. The reality of modern Peace Operations is that a mission will almost never fit neatly into one doctrinal category. The judge advocate should use the doctrinal categories only as a guide to reaching the legal issues that affect

each piece of the operation. Most operations are fluid situations, made up of multifaceted and interrelated missions. The following is a list of **non-doctrinal** terms that have been used to place a label on a mission or operation that does not neatly fall into one of the above definitions.

- Second generation peacekeeping¹⁹
- Aggravated peacekeeping
- Wider peacekeeping
- Expanded peacekeeping
- Protective/humanitarian engagement²⁰
- Stability operations²¹

LEGAL AUTHORITY & U.S. ROLES IN PEACE OPERATIONS

As stated above, peacekeeping evolved essentially as a compromise out of a necessity to control conflicts without formally presenting the issue to the UN Security Council for Chapter VII action which would likely be doomed by a superpower. The UN Charter does not directly provide for peacekeeping. Due to the limited authority of traditional “peacekeeping” operations (i.e., no enforcement powers), it is accepted that **Chapter VI, Pacific Settlement of Disputes**, provides the legal authority for UN peacekeeping.

Enforcement actions are authorized under Chapter VII of the UN Charter. The authorizing Security Council resolution will typically refer to Chapter VII in the text and authorize “**all necessary means/measures**” (allowing for the force) to accomplish the mission. Recent examples of Chapter VII operations are Somalia (both UNITAF and UNOSOM II), UNPROFOR, Haiti (the initial operation, UNMIH is Chapter VI), and IFOR as well as SFOR. The UN must be acting to **maintain or restore international peace and security** before it may undertake or authorize an enforcement action. As the UN becomes more willing and able to use these Chapter VII enforcement powers to impose its will, many Third World states fear a new kind of colonialism. Although the Charter specifically precludes UN involvement in matters “essentially within the domestic jurisdiction” of states, that general legal norm “does not prejudice the application of enforcement measures under Chapter VII.”²²

As a permanent member of the Security Council, the U.S. has an important political role in the genesis of Peace Operations under a UN mandate. The judge advocate serves an important function in assisting leaders in the translation of vague UN mandates into the specified and implied military tasks on the ground. The mission (and hence the authorized tasks) must be linked to authorized political objectives

As a corollary to normal UN authorization for an operation, international agreements provide legal authorization for some Peace Operations. The Dayton Accords and the MFO are examples of this type of Peace Operation. As a general

¹⁹ Second generation peacekeeping is a term being used within the UN as a way to characterize peacekeeping efforts designed to respond to international life in the post-cold war era. This includes difficulties being experienced by some regimes in coping with the withdrawal of super-power support, weak institutions, collapsing economies, natural disasters and ethnic strife. As new conflicts take place within nations rather than between them, the UN has become involved with civil wars, secession, partitions, ethnic clashes, tribal struggles, and in some cases, rescuing failed states. The traditional peacekeeping military tasks are being complemented by measures to strengthen institutions, encourage political participation, protect human rights, organize elections, and promote economic and social development. *United Nations Peace-keeping*, United Nations Department of Public Information DPI/1399-93527-August 1993-35M.

²⁰ Protective/Humanitarian engagement involves the use of military to protect “safe havens” or to effect humanitarian operations. These measures could be authorized under either Chapter VI or VII of the UN Charter. Bosnia and Somalia are possible examples.

²¹ This term dates from Special Forces doctrine in the early Vietnam period. The draft version of FM 100-20 adopts the term with reference to Peace Operations as well as the broader range of MOOTW missions. See Chapter 13, FM 100-5, Operations (14 June 1993); Chapter V, Joint Pub 3-0, DOCTRINE FOR JOINT OPERATIONS (1 February 1995).

²² UN CHARTER art. 2, para. 7.

rule of international law, states cannot procure treaties through coercion or the threat of force.²³ However, the established UN Charter mechanisms for authorizing the use of force by UN Member states define the lawful parameters. In other words, even if parties reach agreement following the use of force (or the threat thereof) or other means of inducement authorized under Chapter VII, the treaty is binding.²⁴

Therefore: U.S. participation in Peace Operations falls into these discrete categories:

- Participation **IN** United Nations Chapter VI Operations (UNTSO, UNMIH): This type of operation must comply with the restraints of the United Nations Participation Act (UNPA).²⁵ § 7 of the UNPA (22 U.S.C. § 287d-1) allows the President to detail armed forces personnel to the United Nations to serve as observers, guards, or in any other noncombat capacity. § 628 of the Foreign Assistance Act (22 U.S.C. § 2388) is another authority which allows the head of any agency of the U.S. government to detail, assign, or otherwise make available any officer to serve with the staff of any international organization or to render any **technical, scientific, or professional advice or service to or in cooperation with such organization**.²⁶ This authority cannot be exercised by direct coordination from the organization to the unit. Personnel may only be tasked following DoD approval channels. No more than 1,000 personnel worldwide may be assigned under the authority of § 7 at any one time, while § 628 is not similarly limited.
- Participation **IN SUPPORT OF** United Nations Peace Operations: These operations are linked to underlying United Nations authority. Examples are the assignment of personnel to serve with the UN Headquarters in New York under § 628 or the provision of DoD personnel or equipment to support International War Crimes Tribunals.
- Operations **SUPPORTING** Enforcement of UN Security Council Resolutions: These operations are generally pursuant to Chapter VII mandates, and are rooted in the President's constitutional authority as the Commander in Chief. Operation Joint Endeavor was authorized by S.C. Res. 1031, Joint Guard is authorized by UNSCR 1088. The operations are subject to an almost infinite variety of permutations. For example, Operations Sharp Guard and Deny Flight enforced embargoes based on Chapter VII.

JUDGE ADVOCATE LEGAL CONSIDERATIONS:

Legal Authority and Mandate

- UNDERSTAND THE RELATIONSHIP BETWEEN THE MANDATE AND MISSION!! The first concern for the judge advocate is to determine the type of operation (peacekeeping, enforcement, etc.), and the general concept of legal authority for the operation (if UN, Chapter VI or VII). In the context of Operation Restore Hope, one commander commented that the lawyer is the "High Priest of the mission statement." **This will define the parameters of the operation, force composition, ROE, status, governing fiscal authorities, etc.** The first place to start is to assemble the various Security Council resolutions that authorize the establishment of the peace operation and form the mandate for the Force. The mandate by nature is political and often imprecise, resulting from diplomatic negotiation and compromise. A mandate of "maintain a secure and stable environment" (as in Haiti) can often pose difficulties when defining tasks and measuring success. The mandate should describe the mission of the Force and the manner in which the Force will operate. **The CJCS Execute Order for the**

²³ Vienna Convention on the Law of Treaties, arts. 51-53 UN Doc. A/Conf. 39/27, *reprinted in* 8 I.L.M. 679 (1969).

²⁴ *Id.* at art. 52; Restatement (Third) of the Foreign Relations Law of the United States § 331 cmt. d (1986).

²⁵ P.L. 72-264, *codified at* 22 U.S.C. § 287.

²⁶ 22 U.S.C. §§ 2389 and 2390 contain the requirements for status of personnel assigned under § 628 FAA as well as the terms governing such assignments. **Procedures.** E.O. 12113 delegates to the SECDEF, in consultation with SECSTATE, determination authority. Approval of initial detail to UN operation under this authority resides with SECDEF. The same arrangements with the UN as outlined above for Section 7 UNPA details apply here. **Reimbursements** for section 628 details are governed by section 630 of the FAA. Section 630 provides four possibilities: (1) waiver of reimbursement; (2) direct reimbursement to the service concerned with moneys flowing back to relevant accounts that are then available to expend for the same purposes; (3) advance of funds for costs associated with the detail; and (4) receipt of a credit against the U.S. fair share of the operating expenses of the international organization in lieu of direct reimbursement. Current policy is that DoD will be reimbursed the incremental costs associated with a detail of U.S. military to a UN operation under this authority (i.e., hostile fire pay; family separation allowance) and that State will credit the remainder against the U.S. peacekeeping assessment (currently paid at 30.4% of the overall UN PKO budget).

Operation is the primary source for defining the mission, but it will usually reflect the underlying UN mandate. The mandate may also:

- Include the tasks of functions to be performed.
- Nominate the force CDR and ask for the Council's approval.
- State the size and organization of the Force.
- List those states that may provide contingents.
- Outline proposals for the movement and maintenance of the Force, including states that might provide transport aircraft, shipping, and logistical units.
- Set the initial time limit for the operation.
- Set arrangements for financing the operations.

Aside from helping commanders define the specified and implied tasks, the mandate outlines the parameters of the authorized mission. Thus, the mandate helps the lawyer and comptroller define the lawful uses of U.S. military O&M funds in accomplishing the mission. In today's complex contingencies, the UN action may often be supplemented by subsequent agreements between the parties which affect the legal rights and duties of the military forces. UNSCR 1088 applies to SFOR at the time of this writing, but references the General Framework Agreement for Peace (Dayton Accords) as well as the Peace Implementation Council Agreements, signed in Florence on 14 June 1996.

Chain of Command Issues

- U.S. Commanders may never take oaths of Loyalty to the UN or other organization.²⁷
- Force Protection is an inherent aspect of command that is nowhere prescribed in Title 10.
- Limitations under PDD-25: A foreign commander cannot change a mission or deploy U.S. forces outside the area designated in the CJCS deployment order, separate units, administer discipline, or modify the internal organization of U.S. forces.

In a pure Chapter VI Peacekeeping Operation, command originates from the authority of the Security Council to the Secretary-General, and down to the Force Commander. The Secretary-General is responsible to the Security Council for the organization, conduct, and direction of the force, and he alone reports to the Security Council about it. The Secretary-General decides the force's tasks and is charged with keeping the Security Council fully informed of developments relating to the force. The Secretary-General appoints the force commander, who conducts the day to day operations, all policy matters are referred back to the Secretary-General. In many operations the Secretary-General may also appoint a civilian Special Representative to the Secretary General (SRSG) to coordinate policy matters and may also serve as the "Head of Mission." The relationship between the special representative and the military force commander depends on the operation, and the force commander may be subordinate to the special representative. In some cases the military force commander may be dual hatted and also serve as the head of mission. In Haiti, the force commander was subordinate to the SRSG, and equal in rank to the UN Administrative Officer (who controlled the funds) and the Civilian Police Commissioner.

In most Chapter VII enforcement operations, (e.g. Desert Shield/Storm, Somalia, Haiti, and IFOR/SFOR, to name a few), the Security Council will authorize member states or a regional organization to conduct the enforcement operation. The authorizing Security Council Resolution provides policy direction, but military command and control remains with member states or a regional organization. Under the Dayton Peace Accord, sanctioned by UN Security Council

²⁷ The UN asked MG Kinzer to take such an oath of loyalty during UNMIH, and the judge advocate coordinated with CJCS to prevent the taking of a foreign oath. The same issue has surfaced in the context of NATO operations under the PFP SOFA (with the same result). See also 22 U.S.C. § 2387.

Resolution 1088, SFOR operates under the authority of, and is subject to, the direction and political control of the North Atlantic Council.

Mission Creep

Ensure that the mission, ROE, and fiscal authority are meshed properly. Mission creep comes in two forms. First, new or shifting guidance or missions that require different military operations than what was initially planned. This kind of mission creep comes from above, and you as Judge Advocate, cannot prevent it, just help control its impact. For instance, do the ROE need to be modified to match the changed mission (i.e., a changed or increased threat level) and are there any status or SOFA concerns. An example might be moving from peacekeeping (monitoring a cease-fire) to peace enforcement (enforcing a cease-fire).

The other potential type of mission creep occurs when attempting to do more than what is allowed in the current mandate and mission. This usually comes from a commander wanting to do good things (nation building) in his AO: rebuilding structures, training local nationals, and other activities which may be good for the local population, but outside the mission. This problem typically manifests itself in not having the right kind of money to pay for these types of assistance. In Bosnia, there is no generic authority for humanitarian assistance operations, and Judge Advocates have helped prevent mission expansion that could alter the underlying strategic posture of SFOR as an essentially neutral interpositional force.

Status of Forces/Status of Mission Agreement

- Know the Status of U.S. Forces in the AO & Train Them Accordingly
- Notify the CINC and State Department before negotiating or beginning discussions with a foreign government as required by State Department Circular 175.
- Watch for Varying Degrees of Status for Supporting Units on the Periphery of the AO
- This is likely the source for determining who is responsible for paying claims.

The necessity for a SOFA (termed a SOMA in Chapter VI operations commanded by the UN) depends on the type of operation. Enforcement operations do not depend on, and may not have the consent of the host authorities, and therefore will not normally have a SOFA. Most other operations **should** have a SOFA/diplomatic note/or other international agreement to gain some protection for military forces from host nation jurisdiction. **AGREEMENTS SHOULD INCLUDE LANGUAGE WHICH PROTECTS CIVILIANS WHO ARE EMPLOYED BY OR ACCOMPANY U.S. FORCES.**

In most instances the SOFA will be a bilateral international agreement between the UN (if UN commanded) or the U.S. and the host nation(s). In UN operations the SOFA will usually be based on the Model Status of Forces Agreement. The SOFA should include the right of a contingent to exercise exclusive criminal jurisdiction over its military personnel; excusal from paying various fees, taxes, and customs levies; and the provision of installations and other required facilities to the Force by the host nation.

The SOFA/SOMA may also include:

- The international status of the UN Force and its members.
- Entry and departure permits to and from the HN.
- Identity documents.
- The right to carry arms as well as the authorized type(s) of weapons.
- Freedom of movement in the performance of UN service.

- Freedom of movement of individual members of the force in the HN.
- The utilization of airports, harbors, and road networks in the HN.
- The right to operate its own communications system across the radio spectrum.
- Postal regulations.
- The flying of UN and national flags.
- Uniform regulations.
- Permissions to operate UN vehicles without special registration.
- Military Police.
- General supply and maintenance matters (imports of equipment, commodities, local procurement of provisions and POL.
- Matters of compensation (in respect of the HN's property).

The UN (and the U.S.) entry into a host nation may precede the negotiation and conclusion of a SOFA. Sometimes there may be an exchange of Diplomatic Notes, a verbal agreement by the host authorities to comply with the terms of the model SOFA even though not signed, or just nothing at all.

TWO DEFAULT SOURCES OF LEGAL STATUS: (1) "The Convention on the Safety of United Nations and Associated Personnel." (*see infra*) Current status: 43 signatories, 23 ratifications. The treaty entered into force on 15 January 1999. The convention requires States to release captured personnel, to treat them in accordance with the 1949 Geneva Convention of Prisoners of War while in custody, and imposes criminal liability on those who attack peacekeepers or other personnel acting in support of UN authorized operations. The Convention will apply in UN operations authorized under Chapter VI or VII. The Convention will not apply in enforcement operations under Chapter VII **in which** any of the UN personnel are engaged as combatants against organized armed forces **and to which** the law of international armed conflict applies. (2) The Convention on the Privileges and Immunities of the United Nations, 1946 (*see infra*) Article VI § 22 defines and explains the legal rights of United Nations personnel as "Experts on Mission." In particular, Experts on Mission are **NOT prisoners of war and therefore cannot lawfully be detained or have their mission interfered with by any party.**

Laws of War.

It is the UN and U.S. position that Chapter VI operations are not international armed conflict (requiring the application of the Geneva Conventions) as between the peacekeepers and any of the belligerent parties. The Geneva Conventions may of course apply between the belligerent parties. In Chapter VII operations, the answer will depend on the situation. Are the UN personnel engaged as combatants against organized armed forces (example Desert Storm)? If the answer is no, then the Geneva Conventions do **not** apply as between the UN Forces and the belligerent parties. In Somalia, the U.S. position was that the Geneva Conventions did not apply, it was not international armed conflict and the U.S. was not an occupying force. However, the fourth Geneva Convention (the civilians convention) was used to help guide U.S. obligations to the local nationals. In NATO's enforcement of the no-fly zone and subsequent bombing campaign over Bosnia, it was the UN, NATO, and U.S. position that it was not armed conflict as between the NATO forces and the belligerents. The aircrew were in an "expert on mission" status and they could not be fired upon or kept prisoner. If taken into custody, they must be immediately released. Whether the Geneva Conventions do or do not legally apply, the minimum humanitarian protections contained within the Geneva Conventions will always apply.

As a matter of U.S. policy (CJCSI 5801.01), U.S. forces will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized, and unless otherwise

directed by competent authorities, will apply law of war principles during all operations that are characterized as Military Operations Other Than War.

Rules of Engagement

Pure Chapter VI missions: The two principal tenets are the use of force for self-defense only, and total impartiality. The use of deadly force is justified only under situations of extreme necessity (typically in self-defense), and as a last resort when all lesser means have failed to curtail the use of violence by the parties involved. The use of unnecessary or illegal force undermines the credibility and acceptability of a peacekeeping force to the host nations, the participants in the dispute, and within the international community. It may escalate the level of violence in the area and create a situation in which the peacekeeping force becomes part of the local problem. The use of force must be carefully controlled and restricted in its application. **Peacekeeping forces normally have no mandate to prevent violations of an agreement by the active use of force.** The passive use of force employs physical means that are not intended to harm individuals, installations, or equipment. Examples are the use of vehicles to block the passage of persons or vehicles and the removal of unauthorized persons from peacekeeping force positions. The active use of force employs means that result in physical harm to individuals, installations, or equipment. Examples are the use of batons, rifle butts, and weapons fire.

Peace Enforcement: Peace enforcement operations on the other hand, may have varying degrees of expanded ROE and may allow for the use of force to accomplish the mission (i.e. the use of force beyond that of self-defense). In peace enforcement active force may be allowed to accomplish all or portions of the mission. See the chapter on Rules of Engagement for tips in drafting ROE, training ROE, and sample peace operations ROE. See also the CLAMO ROE Handbook described in the chapter on CLAMO.

Funding Considerations

- **FIND POSITIVE AUTHORITY FOR EACH FISCAL OBLIGATION AND APPROPRIATE FUNDS TO ALLOCATE AGAINST THE STATUTORY AUTHORITY!!** (Judge advocates from Operation Joint Guard report that these issues take up to 90% of their time).
- Be certain that Congress receives at least 15 days prior notice before you expend any DoD funds to “transfer to another nation or an international organization any defense articles or services.”²⁸
- Recognize that you can use simplified acquisition procedures for expenditures up to \$200,000 outside the U.S. in support of a contingency operation,²⁹ or a humanitarian or peacekeeping operation (defined for this purpose as operations under Chapter VI or VII).³⁰
- Recognize when the U.S. will be required to seek reimbursement for its expenses, ensure that an adequate accounting system is in place, and diligently prepare legal opinions documenting the spending decisions reached throughout the deployment.
- **Do not allow O&M funds to be obligated** directly or indirectly to pay the costs of a Chapter VI Peacekeeping Assessment (Congress makes a special appropriation as necessary) or to pay any U.S. arrearages to the United Nations.³¹

AUTHORITIES FOR EXPENDITURES TO SUPPORT NON-U.S. FORCES DURING PEACE OPERATIONS:

²⁸ § 8080 of the FY 98 DoD Appropriations Act, P.L. 105-56. The provision applies to “any international peacekeeping or peace enforcement activity under the authority of Chapter VI or VII.” In practice, DoD has executed a blanket agreement, the judge advocate should ensure that the recipient and DoD good or service is covered by the notification to Congress.

²⁹ Defined in 10 U.S.C. § 127a. Allows units receiving support from elements of the Department of Defense during statutorily defined operations to waive reimbursement to the Defense Business Operations Fund.

³⁰ 10 U.S.C. § 2302(7).

³¹ 10 U.S.C. § 405.

SECTION 7 OF THE UNITED NATIONS PARTICIPATION ACT (UNPA) (22 U.S.C. § 287D-1).

- A. **Authority.** Authorizes the President, upon request of the UN, to furnish services, facilities, or other assistance in support of UN activities directed to the peaceful settlement of disputes **and not involving the employment of armed forces contemplated by Chapter VII.** Support is provided “notwithstanding the provisions of any other law.”
- B. Procedures.
1. Executive Order (E.O.) 10106, dated 19 Jan 1951, authorizes SECSTATE to request SECDEF to provide assistance requested by the UN. In practice, the UN will issue a Letter of Assist (LOA) (i.e., funded-order form used by the UN to request goods and services directly from a member State) to the U.S. Mission to the UN in New York
 2. (U.S./UN). U.S./UN forwards the LOA to the State Department where it is reviewed and transmitted to DoD with a cover letter recommendation as to approval and funding. Within DoD, USD(P) coordinate UN request. In some cases, SECDEF has delegated to USD(P) authority to approve. Upon approval, SECDEF will direct a military department to implement.
 3. Support provided to the UN under Section 7 authority does not require the negotiation and conclusion of an overcharging agreement but is handled solely on the basis of the UN’s LOA. Army procedures for processing UN requests under Section 7 of the UNPA are set out in DA PAM 700-15, dated 1 May 1986.
- C. Requirements.
1. Statute prescribes that reimbursement shall ordinarily be required from the UN. Reimbursements flow back to appropriate service accounts. Reimbursement may be waived, however, when the President finds exceptional circumstances or that such waiver is in the national interest. E.O. 10206 delegates to SECSTATE authority to waive reimbursement after consultation with SECDEF.
 2. PDD-25 on reforming multilateral peace operations sets current policy. PDD-25 has modified E.O. 10206 to the extent that current policy is to seek reimbursement for all assistance provided by DoD to assessed UN peace operations. Reimbursement only waived in exceptional cases and when both SECSTATE and SECDEF agree. In the case of disagreement, final decision resides with the President.

SECTION 607 OF THE FOREIGN ASSISTANCE ACT OF 1961(FAA) (22 U.S.C. § 2357).

- D. **Authority.** Upon determination of the President, that it is consistent with and in furtherance of the purposes of Subchapter I of the FAA, any agency of the U.S. government is authorized to furnish “**commodities and services**” to, *inter alia*, friendly foreign countries and to international organizations. Peacekeeping and disaster relief efforts are examples of Subchapter I purposes. The term “commodities and services” has been interpreted very broadly.
- E. Procedures.
1. The determination required by the statute must be made each time a new UN operation will be supported under this authority. The authority for making this determination has been delegated to the Director of the U.S. Trade and Development Agency by E.O. 12163, dated 29 Sep. 1979.
 2. Each new UN operation requires the negotiation and conclusion of a separate “607 agreement” with the UN. These 607 agreements set the overall terms and conditions that govern the provision of assistance and are currently in place to support UN authorized operations in Somalia, Former Republic of Yugoslavia, Rwanda, and Haiti. The UN LOA procedure is the ordering mechanism specified in those agreements.
NOTE: 607 agreements are international agreements negotiated under the authority of SecState (often negotiated by DoD personnel under Circular 175 authority).

F. Reimbursements.

1. Under section 607, assistance may only be furnished on an advance of funds or reimbursable basis. **Reimbursement from the UN cannot be waived.** (THEREFORE THE UNITS MUST CAPTURE AND REPORT INCREMENTAL COSTS OF PROVIDING SUCH SUPPORT).
2. Reimbursements received may be deposited by the service providing the assistance back into the appropriation originally used or, if received within 180 days of the close of the fiscal year in which the assistance was furnished, into the current account concerned. These amounts then remain available for the purposes for which they were appropriated. Reimbursements received after this 180-day period cannot be retained by DoD and must be deposited in the miscellaneous receipts account of the general treasury (*see*: GAO Report No. GAO/NSIAD-94-88. Cost of DoD Operations in Somalia, March 1994).

DRAWDOWN AUTHORITIES THAT PROVIDE LEGAL GROUNDS FOR EXPENDING O&M FUNDS FOR SPECIFIED STATUTORY PURPOSES (GENERALLY WITH ONLY PARTIAL OR NO REIMBURSEMENT).

G. Section 506(a)(1) Foreign Assistance Act³² (Military Assistance).

1. **Requirement for Use.** Presidential determination and report, in advance to Congress that:
 - a. An unforeseen emergency exists that requires immediate military assistance to a foreign country or international organization; and
 - b. The emergency requirement cannot be met under the Arms Export Control Act (AECA) or any other law.
2. **Forms of Assistance.** President may authorize the drawdown of defense articles and services from the stocks of DoD, and military education and training from DoD (**ergo, NO AUTHORITY TO CONTRACT UNDER THE DRAWDOWN AUTHORITY, with one new exception: Congress amended this statute to allow “the supply of commercial transportation and related services that are acquired by contract for the purposes of the drawdown in question if the cost to acquire such commercial transportation and related services is less than the cost to the United States Government of providing such services from existing agency assets”**).³³
3. Limitations.
 - a. **Purpose.** Drawdown must be for a FAA subchapter II purpose. These include: military assistance (CH 2); peacekeeping (CH 6); and anti-terrorism (CH 8).
 - b. **Ceiling Amount.** Assistance provided under this section is limited to an aggregate value of \$100 million in any fiscal year.

H. Section 506(a)(2) Foreign Assistance Act³⁴ (Any Agency of the U.S. Government).

1. **Requirement for Use.** Presidential determination and report (IAW § 652 FAA), in advance to Congress that it is in the national interests of the United State.

³² 22 U.S.C. § 2318. For example, President Clinton authorized drawdowns in support of the Rapid Reaction Force in Bosnia (60 Fed. Reg. 35465, 60 Fed. Reg. 44721, & 60 Fed. Reg. 40257) and in support of ECOMOG Peacekeeping in Liberia (61 Fed. Reg. 56859 & 61 Fed. Reg. 56861)

³³ Foreign Operations Authorization Act, Fiscal Year 1998, 111 Stat. 2433, § 525.

³⁴ 22 U.S.C. § 2318.

2. **Forms of Assistance.** President may authorize the drawdown of articles and services from the inventory and resources of any agency of the U.S. government, and military education and training from DoD **(ERGO, NO AUTHORITY TO CONTRACT UNDER THE DRAWDOWN AUTHORITY).**
3. **Limitations.**
 - a. **Purpose.** Drawdown must be for the purposes and under the authority of FAA Chapter 8 (relating to international narcotics control), Chapter 9 (relating to international disaster assistance), or The Migration and Refugee Assistance Act of 1962.
 - b. **Ceiling Amount.** Assistance provided under this section is limited to an aggregate value of \$150 million in any fiscal year(of which no more than \$75 million can come from DoD).
 - c. **Contract Authority.** Section 506(a) provides neither funds nor contract authority. It does not authorize new procurement to provide the material, services, or training directed (DoD 5105.38-M, section 1102).

I. Section 551 Foreign Assistance Act³⁵

1. **Requirements for Use.** President decides to furnish assistance to friendly countries and international organizations, on such terms and conditions as he may determine, for peacekeeping operations and other programs carried out in the furtherance of the national security interests of the U.S.. 22 U.S.C. § 2348.
2. **Limitations.** No more than \$5 million may be used to reimburse DoD for expenses incurred pursuant to § 7 of the UN Participation Act.

J. Section 552(c)(2)Foreign Assistance Act ³⁶ (Peacekeeping).

1. **Requirement for Use.** Presidential determination that:
 - a. As a result of an unforeseen emergency the provision of assistance under part II of the FAA (Military or Security Assistance), in excess of the funds otherwise available for such assistance, is important to the U.S. national interests; and
 - b. An unforeseen emergency requires the immediate provision of assistance; and
 - c. Reports, in advance, to Congress as required by section 652 of the FAA (22 U.S.C. § 2411).
2. **Forms of Assistance.** President may authorize the drawdown of “commodities and services” from the inventories and resources of any U.S. Government agency.
3. **Limitations.**
 - a. **Purpose.** Drawdown must be for a purpose and under the authority of Chapter 6, Peacekeeping Operations, of Part II of the FAA. Congress provided a special allowance of up to \$25 million in commodities and services for the United Nations War Crimes Tribunal established with regard to the Former Yugoslavia. This special drawdown authority is subject to two conditions 1) the President makes a special determination that DoD goods or services will contribute to a just resolution of the charges of genocide or other violations of international humanitarian law and 2) the Secretary of State submits reports every 180 days to the Committees on Appropriations describing the steps the U.S. is

³⁵ 22 U.S.C. § 2348.

³⁶ 22 U.S.C. § 2348a.

taking to provide information concerning the crimes of genocide and other violations of international law.³⁷

- b. **Ceiling Amount.** Assistance provided under this section is limited to an aggregate value of \$25 million in any fiscal year.

K. Miscellaneous Authorities.

1. **Section 451 Foreign Assistance Act “Unanticipated Contingency” Authority.**³⁸ Section 451 of the FAA is a special presidential authority to use up to \$25 million in any fiscal year of funds made available for FAA purposes to provide FAA-authorized assistance for “unanticipated contingencies.” These funds may be used “notwithstanding any other provisions of law.” Their use is virtually unrestricted. There is a congressional reporting requirement associated with the use of this authority.
2. **Section 632 Transfer Authority.** Section 632 of the FAA authorizes the President to allocate or transfer funds appropriated for FAA purposes to any agency of the U.S. Government for carrying out the purposes of the FAA. Such funds may be expended by that agency pursuant to authorities conferred in the FAA or under authorities specific to that agency.

BOTTOM LINE: During a Chapter VI, the judge advocate must be familiar with UN purchasing procedures and what support should be supplied by the UN or host nation. The judge advocate should review the **Aide-Memoire/Terms of Reference**. Aide-Memoire sets out the Mission force structure and requirements in terms of manpower and equipment. It provides the terms of reimbursement from the UN to the Contingents for the provision of personnel and equipment. Exceeding the Aide-Memoire in terms of either manpower or equipment could result in the UN’s refusal to reimburse for the excess. Not following proper procedure or purchasing materials that should be provided from other sources may result in the U.S. not being reimbursed by the UN. The UN Field Administration Manual will provide guidance. In general, the unit must receive a formal LOA in order to receive reimbursement under § 7 of the UNPA. The unit can lawfully expend its own O&M funds for mission essential goods or services which the UN refuses to allow (no LOA issued).

During Chapter VI or Chapter VII operations, the judge advocate should aggressively weave lawful funding authorities with available funds in pursuit of the needs of the mission.

³⁷ P.L. 105-118, 111 Stat. 2386 § 553 (1997).

³⁸ 22 U.S.C. § 2261.

APPENDIX A

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1 UNTS 15, 13 FEBRUARY 1946.

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Member such privileges and immunities as are necessary for the fulfillment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

Juridical Personality

SECTION 1. The United Nations shall possess juridical personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of in movable and movable property;
- (c) to institute legal proceedings.

Article II

Property, Funds and Assets

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind,

- (a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and other property shall be:

- (a) Exempt from all direct taxes; it is understood however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respects of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

Facilities in Respect of Communications

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

The Representatives of Members

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression & “representatives”; shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

Officials

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) Be immune from national service obligations;
- (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 21. The United Nations shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

Experts on Missions for the United Nations

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) Inviolability for all papers and documents;
- (d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) The Same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

United Nations Laissez-Passer

SECTION 24. The United Nations may issue United Nations *laissez-passer* to its officials. *These laissez-passer* shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are traveling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are traveling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries-General and Directors traveling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

Settlement of Disputes

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
- (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

SECTION 30. All differences arising out of the interpretation or application of the present convention shall be referred to the international Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Final Article

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the Convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised Convention.

SECTION 36. The Secretary-General may conclude with any Member or Member supplementary agreements adjusting the provisions of this Convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

APPENDIX B

CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, G.A. RES. 49/59, 49 UN GAOR SUPP. (NO. 49) AT 299, UN DOC. A/49/49 (1994).

The General Assembly,

Considering that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Gravely concerned at the increasing number of attacks on United Nations and associated personnel that have caused death or serious injury,

Bearing in mind that United Nations operations may be conducted in situations that entail risk to the safety of United Nations and associated personnel,

Recognizing the need to strengthen and to keep under review arrangements for the protection of United Nations and associated personnel,

Recalling its resolution 48/37 of 9 December 1993, by which it established the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, with particular reference to responsibility for attacks on such personnel,

Taking into account the report of the Ad Hoc Committee, in particular the revised negotiating text resulting from the work of the Ad Hoc Committee,

Recalling its decision, in accordance with the recommendation of the Ad Hoc Committee, to re-establish, at its current session, a working group within the framework of the Sixth Committee to continue consideration of the revised negotiating text and of proposals relating thereto,

Having considered the text of the draft convention prepared by the working group and submitted to the Sixth Committee for consideration with a view to its adoption,

1. Adopts and opens for signature and ratification, acceptance or approval, or for accession, the Convention on the Safety of United Nations and Associated Personnel, the text of which is annexed to the present resolution;
2. Urges States to take all appropriate measures to ensure the safety and security of United Nations and associated personnel within their territory;
3. Recommends that the safety and security of United Nations and associated personnel be kept under continuing review by all relevant bodies of the Organization;
4. Underlines the importance it attaches to the speedy conclusion of a comprehensive review of arrangements for compensation for death, disability, injury or illness attributable to peace-keeping service, with a view to developing equitable and appropriate arrangements and to ensuring expeditious reimbursement.

84th plenary meeting

9 December 1994

CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

(a) “United Nations personnel” means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) “Associated personnel” means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfillment of the mandate of a United Nations operation;

(c) “United Nations operation” means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control: (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(d) “Host State” means a State in whose territory a United Nations operation is conducted;

(e) “Transit State” means a State, other than the host State, in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.
2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.
2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, *inter alia*, provisions on privileges and immunities for military and police components of the operation.

Article 5

Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall: (a) Respect the laws and regulations of the host State and the transit State; and (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.
2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7

Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.
2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

Duty to release or return United Nations and associated personnel captured or detained

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9

Crimes against United Nations and associated personnel

1. The intentional commission of: (a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel; (b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty; (c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act; (d) An attempt to commit any such attack; and (e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack, shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases: (a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

- (a) By a stateless person whose habitual residence is in that State; or
- (b) With respect to a national of that State; or
- (c) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11

Prevention of crimes against United Nations and associated personnel

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and
- (b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12

Communication of information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.
2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13

Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.
2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to: (a) The State where the crime was committed; (b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence; (c) The State or States of which the victim is a national; and (d) Other interested States.

Article 14

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15

Extradition of alleged offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16

Mutual assistance in criminal matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17

Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.
2. Any alleged offender shall be entitled: (a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and (b) To be visited by a representative of that State or those States.

Article 18

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20

Savings clauses

Nothing in this Convention shall affect:

- (a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;
- (b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;
- (c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;

(d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or

(e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22

Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

Review meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24

Signature

This Convention shall be open for signature by all States, until 31 December 1995, at United Nations Headquarters in New York.

Article 25

Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

Entry into force

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 29

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.